

1981 WL 158034 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 30, 1981

*1 Purvis W. Collins

Director

South Carolina Retirement System

Sol Blatt Building

Second Floor

Columbia, South Carolina 29201

Dear Mr. Collins:

You have requested an opinion as to whether certain pay items are includable in the average final salary for retirement purposes under the South Carolina Retirement System and the Police Officers' Retirement System. The average final salary is controlled by the definition of the term 'earnable compensation' in §§ 9-1-10(16) and 9-11-10(13), as amended. The items about which you have asked are the following, which I quote from your letter:

a) Overtime Pay.

b) Shift Differential pay.

c) Teaching in summer school for public school teachers, higher education personnel and others whose basic contract is for periods less than twelve months.

d) Other special pay items.

The compensation defined by the above two sections is compensation payable to the employee if he worked for his 'full normal working time.' The question is thus whether the above items are properly covered by that definition.

In analyzing the question, it appears that overtime pay and the work of summer school teachers are within the same category. Both involve recurring, but not necessary regular, pay for work which is done on an as needed or as available basis. Although legal definitions of the term 'normal' are fairly rare, such definitions as have been found would include this type of work within the meaning of the term 'normal.' The Restatement of Torts 2nd, § 302 commented, provides in that context that 'normal' means occurrences which take place not only constantly and habitually but also periodically or with a certain degree of frequency. Webster's Third New International Dictionary (1976) includes among the definitions of 'normal,' 'conformed to a type standard or regular pattern.' Both of these common definitions of the term 'normal' are broad enough to include work which is performed on occasion even though not constantly or at every available opportunity.

Shift differential pay, that is, the extra compensation paid to such persons as policemen or hospital workers for working long or undesirable hours, is in any sense of the term 'normal' within the context of the employment from which it arises.

As to other special pay items, it is not possible to set forth in advance a definition which will provide a reasonable determination of whether such items are includable as earnable compensation. Obviously, bonuses and other such payments made on a one-time basis are special as opposed to normal and should not be included. The includability of other special pay items will probably have to be determined on the basis of each individual case in which they arise.

For the reasons stated above, it is the opinion of this office that overtime pay, shift differential pay and the pay of persons who teach summer school even though their contract is for less than a year are properly included within the meaning of the term 'earnable compensation' or 'compensation' as set forth in the retirement statutes.

Sincerely yours,

*2 Kenneth P. Woodington
Assistant Attorney General

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